

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

RITA VAZQUEZ)	
Claimant)	
V.)	
)	
RANDSTAD)	
Respondent)	Docket No. 1,064,963
AND)	
)	
INDEMNITY INSURANCE COMPANY)	
OF NORTH AMERICA)	
Insurance Carrier)	

ORDER

Claimant appealed the July 18, 2014, Award entered by Administrative Law Judge (ALJ) Thomas Klein. The Board heard oral argument on January 6, 2015.

APPEARANCES

Claimant appeared pro se.¹ Rachel E. Nelson of Kansas City, Kansas, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

ALJ Klein denied claimant workers compensation benefits as he found claimant failed to present any evidence in support of her claim.

Claimant maintains her constitutional and civil rights were violated and there were due process violations. Claimant asserts she sustained accidental injuries while working for respondent and, therefore, respondent is liable for those injuries.

¹ At oral argument, claimant indicated she has resided at 323 E. 4th St., Hutchinson, KS 67501 since May 2012.

Respondent argues: (1) claimant failed to file a timely appeal and, therefore, the Board should dismiss her claim in its entirety; (2) the Board has no jurisdiction to consider any of the issues raised in claimant's brief pursuant to K.S.A. 44-555c(a); (3) claimant failed to prove she suffered any accidental injuries arising out of and in the course of her employment with respondent; (4) claimant failed to provide adequate notice of any of her alleged accidental injuries; (5) claimant failed to prove that any of her alleged work accidents were the prevailing factor in causing her medical condition and (6) claimant failed to prove she sustained any permanent disability as a result of any of her alleged work accidents. Respondent requests the Board dismiss this appeal or affirm the Award.

The issues before the Board on this appeal are:

1. Did claimant timely file her appeal?
2. Does the Board have jurisdiction to consider claimant's assertions that her constitutional rights were violated?
3. Did claimant sustain personal injuries by accident on April 13, May 7 and June 25, 2012, arising out of and in the course of her employment with respondent? If so, what is the nature and extent of claimant's disability?

FINDINGS OF FACT

After reviewing the entire record and considering the parties' arguments, the Board finds:

Claimant's Application for Hearing alleged she met with personal injury by accident on April 13, May 7 and June 25, 2012. Claimant was initially represented by counsel, but her counsel was allowed to withdraw on October 10, 2013. A regular hearing was held on February 25, 2014. Claimant appeared pro se. She did not testify and presented no evidence. Claimant's terminal date was set for April 28, 2014. The ALJ explained to claimant he was giving her 60, rather than 30, days and told claimant:

What that means, Miss Vazquez, is if you don't have a lawyer and if you don't have evidence in to me by that date, you're going to lose your case. You're either going to have to figure out how to do that by yourself or get some help.²

On June 16, 2014, claimant filed a document with the Division that stated:

With all the respect but I will like to appeal workers compensation firstible *[sic]* the respondent is commit[t]ing perjury. and the Judge didn't let me know they had this

² R.H. Trans. at 9.

final hearing I have proof of everything but I didn't know where I was going to s[e]nd the information that[']s why I was waiting for them to s[e]nd me the letter for the next and last court. and Eric, T Lanha[m] is commit[t]ing perjury and any lawyer wanted to take my case.

Claimant did not provide any evidence prior to her terminal date. An Award was issued on July 18, 2014, and filed with the Division on July 28, 2014. The Award indicates a copy was sent to claimant at 323 East 4th Street, Hutchinson, KS 67501.

A Notice of Appeal was filed by claimant on September 17, 2014. Claimant asserted the ALJ committed errors and violated her civil, due process and constitutional rights. Claimant asserted her appointed attorney was ineffective. She also asserted respondent should pay for her accident and she can no longer work because of her accidents.

At oral argument, claimant indicated she did not file her appeal within 10 days after the Award was issued, less weekends and holidays, because she did not know the law and was unaware of the requirement to do so.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2011 Supp. 44-551(i)(1) states, in part:

All final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge shall be subject to review by the board upon written request of any interested party within 10 days. Intermediate Saturdays, Sundays and legal holidays shall be excluded in the time computation. Review by the board shall be a prerequisite to judicial review as provided for in K.S.A. 44-556 and amendments thereto. On any such review, the board shall have authority to grant or refuse compensation, or to increase or diminish any award of compensation or to remand any matter to the administrative law judge for further proceedings. The orders of the board under this subsection shall be issued within 30 days from the date arguments were presented by the parties.

In *Clonch*,³ the Board cited *Mangiaracina*,⁴ wherein the Kansas Court of Appeals stated:

A pro se litigant in a civil case is required to follow the same rules of procedure and evidence which are binding upon a litigant who is represented by counsel. Our legal

³ *Clonch v. Coalition for Independence*, No. 1,018,350, 2012 WL 2061757 (Kan. WCAB May 17, 2012).

⁴ *Mangiaracina v. Gutierrez*, 11 Kan. App. 2d 594, 595-96, 730 P.2d 1109 (1986).

system cannot function on any basis other than equal treatment of all litigants. To have different rules for different classes of litigants is untenable. A party in civil litigation cannot expect the trial judge or an attorney for the other party to advise him or her of the law or court rules, or to see that his or her case is properly presented to the court. A pro se litigant in a civil case cannot be given either an advantage or a disadvantage solely because of proceeding pro se. . . .

Claimant did not file her appeal within 10 days after the Award, excusing Saturdays, Sundays and holidays, as required by K.S.A. 2011 Supp. 44-551(i)(1). Claimant sent a document to the Division on June 16, 2014, indicating she wanted to appeal. However, that document was filed prior to the Award being issued. Therefore, that is a premature appeal. One cannot appeal an Award that has not yet been issued. Consequently, the Board lacks jurisdiction to consider claimant's appeal.

All other issues on appeal are moot.

CONCLUSION

Claimant's appeal is dismissed for lack of jurisdiction because she failed to appeal her claim to the Board within 10 days after the Award as required by K.S.A. 2011 Supp. 44-551(i)(1).

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.⁵ Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

AWARD

WHEREFORE, the Board dismisses claimant's appeal for lack of jurisdiction.

IT IS SO ORDERED.

⁵ K.S.A. 2013 Supp. 44-555c(j).

Dated this ____ day of February, 2015.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Rita Vazquez, 323 E. 4th St., Hutchinson, KS 67501

Eric T. Lanham and Rachel E. Nelson, Attorney for Respondent and its Insurance
Carrier

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Honorable Thomas Klein, Administrative Law Judge